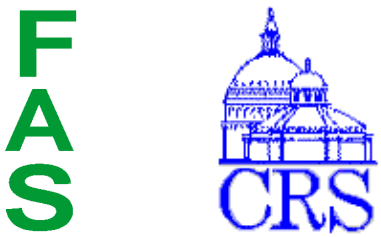

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- Origins and Impact of the Foreign Intelligence Surveillance Act (FISA) Provisions That Expired on March 15, 2020, updated March 31, 2021
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- Congress Considers Reform to Queries of FISA Information as Reauthorization Deadline Approaches, CRS Legal Sidebar, January 8, 2018
- Summary of the Substantive Provisions of S. 2010, the FISA Amendments Reauthorization Act of 2017, and H.R. 3989, the USA Liberty Act of 2017, CRS memorandum, November 16, 2017
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- Surveillance of Foreigners Outside the United States Under Section 702 of the Foreign Intelligence Surveillance Act (FISA), April 13, 2016
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- Selected CRS Materials on Detention and Interrogation of Terrorist Suspects and Enemy Belligerents, CRS Legal Sidebar, December 16, 2014
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- Congressional Oversight of Intelligence: Current Structure and Alternatives, May 14, 2012
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- The National Intelligence Council: Issues and Options for Congress, December 27, 2011
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- Director of National Intelligence Statutory Authorities: Status and Proposals, December 16, 2011
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- Intelligence Estimates: How Useful to Congress?, January 6, 2011
- National Security Letters: Proposed Amendments in the 111th Congress, December 27, 2010
- Securing America's Borders: The Role of the Intelligence Community, December 7, 2010
- Legal Standard for Disclosure of Cell-Site Information (CSI) and Geolocation, memorandum for Sen. Wyden, June 29, 2010
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- The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress, March 19, 2010
- Congress as a Consumer of Intelligence Information, January 28, 2010
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- Retroactive Immunity Provided by the FISA Amendments Act of 2008, July 25, 2008
- The Foreign Intelligence Surveillance Act: A Sketch of Selected Issues, July 7, 2008
- The Foreign Intelligence Surveillance Act: A Brief Overview of Selected Issues, updated July 7, 2008
- The Foreign Intelligence Surveillance Act: Comparison of the Senate Amendment to H.R. 3773 and the House Amendment to the Senate Amendment to H.R. 3773, June 12, 2008
- P.L. 110-55, the Protect America Act of 2007: Modifications to the Foreign Intelligence Surveillance Act, updated February 14, 2008
- The Foreign Intelligence Surveillance Act: Comparison of House-Passed H.R. 3773, S. 2248 as Reported By the Senate Select Committee on Intelligence, and S. 2248 as Reported Out of the Senate Judiciary Committee, updated February 8, 2008
- Fusion Centers: Issues and Options for Congress, updated January 18, 2008

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- Government Access to Phone Calling Activity and Related Records: Legal Authorities, updated August 20, 2007
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- The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework and U.S. Foreign Intelligence Surveillance Court and U.S. Foreign Intelligence Surveillance Court of Review Decisions, updated February 15, 2007
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- National Security Surveillance Act of 2006: S. 3886, Title II (S. 2453 as Reported Out of the Senate Judiciary Committee, updated January 18, 2007
- Electronic Surveillance Modernization Act, as Passed by the House of Representatives, updated January 18, 2007
- Intelligence Reform and Terrorism Prevention Act of 2004: "Lone Wolf" Amendment to the Foreign Intelligence Surveillance Act, updated December 19, 2006
- Special Operations Forces (SOF) and CIA Paramilitary Operations: Issues for Congress, updated December 6, 2006
- Terrorist Surveillance Act of 2006: S. 3931 and Title II of S. 3929, the Terrorist Tracking, Identification, and Prosecution Act of 2006, September 25, 2006
- Anti-Terrorism Authority Under the Laws of the United Kingdom and the United States, September 7, 2006
- Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction: Establishment and Composition, updated August 23, 2006
- Amendments to the Foreign Intelligence Surveillance Act, 1994-2006, July 19, 2006
- Intelligence Reform at the Department of Energy: Policy Issues and Organizational Alternatives, updated July 19, 2006
- Renditions: Constraints Imposed by Laws on Torture, updated April 5, 2006
- Administrative Subpoenas in Criminal Investigations: A Brief Legal Analysis, March 17, 2006
- Administrative Subpoenas in Criminal Investigations: A Sketch, March 17, 2006
- Probable Cause, Reasonable Suspicion, and Reasonableness Standards in the Context of the Fourth Amendment and the Foreign Intelligence Surveillance Act, January 30, 2006
- Statutory Procedures Under Which Congress Is To Be Informed of U.S. Intelligence Activities, Including Covert Actions, January 18, 2006
- Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information, January 5, 2006
- Congress as a Consumer of Intelligence Information, December 14, 2005
- U.S. Intelligence and Policymaking: The Iraq Experience, updated December 2, 2005
- Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress, August 16, 2005
- Security and Freedom Ensured Act (SAFE Act)(H.R. 1526) and Security and Freedom Enhancement Act (SAFE Act)(S. 737): Section By Section Analysis, May 9, 2005
- The SAFE Acts of 2005: H.R. 1526 and S. 737 -- A Sketch, May 9, 2005
- House Select Committee on Intelligence: Leadership and Assignment Limitations, April 25, 2005
- Director of National Intelligence: Statutory Authorities, April 11, 2005
- The National Counterterrorism Center: Implementation Challenges and Issues for Congress, updated March 24, 2005
- Counterintelligence Reform at the Department of Energy: Policy Issues and Organizational Alternatives, updated March 8, 2005
- Intelligence, Surveillance, and Reconnaissance (ISR) Programs: Issues for Congress, updated February 22, 2005
- The Director of National Intelligence and Intelligence Analysis, updated February 11, 2005
- Foreign Intelligence Surveillance Act: Selected Legislation from the 108th Congress, updated January 11, 2005
- Intelligence Reform and Terrorism Prevention Act of 2004: National Standards for Drivers' Licenses, Social Security Cards, and Birth Certificates, January 6, 2005
- Intelligence Community Reorganization: Potential Effects on DOD Intelligence Agencies, updated December 21, 2004
- Consolidating Intelligence Appropriation and Authorization in a Single Committee: 9/11 Commission Recommendation and Alternatives, October 29, 2004
- H.R. 10 (9/11 Recommendations Implementation Act) and S. 2845 (National Intelligence Reform Act of 2004): A Comparative Analysis, updated October 21, 2004

- S.Res. 445: Senate Committee Reorganization for Homeland Security and Intelligence Matters, October 15, 2004
- Senate Select Committee on Intelligence: Term Limits and Assignment Limitations, updated October 14, 2004
- 9/11 Commission Recommendations: Intelligence Budget, September 27, 2004
- Proposals for Intelligence Reorganization, 1949-2004, updated September 24, 2004
- The U.S. Intelligence Budget: A Basic Overview, September 24, 2004
- Lawfulness of Interrogation Techniques under the Geneva Conventions, September 8, 2004
- Requirements for Linguists in Government Agencies, September 2, 2004
- 9/11 Commission Recommendations: Joint Committee on Atomic Energy -- A Model for Congressional Oversight?, August 20, 2004
- Side-by-Side Comparison of Intelligence Community Reforms Proposed by 9/11 Commission, the Bush Administration, Senators Feinstein, Graham and Daschle, and Representatives Harman and Goss; and Current Statute, August 11, 2004 (@ State Dept FPC site)
- The Position of Director of National Intelligence: Issues for Congress, udpated August 12, 2004
- FBI Intelligence Reform Since September 11, 2001: Issues and Options for Congress, updated August 4, 2004
- U.S. Treatment of Prisoners in Iraq: Selected Legal Issues, May 24, 2004
- Analysis of S. 1709: the Security and Freedom Ensured Act of 2003 (SAFE Act), February 19, 2004
- The FBI: Past, Present, and Future, October 2, 2003
- Domestic Intelligence in the United Kingdom: Applicability of the MI-5 Model to the United States, May 19, 2003
- Assassination Ban and E.O. 12333: A Brief Summary, updated January 4, 2002
- Proposed Change to the Foreign Intelligence Surveillance Act (FISA) under S. 113, May 19, 2003
- The Intelligence Community and 9/11: Congressional Hearings and the Status of the Investigation, updated January 16, 2003
- Privacy: Total Information Awareness Programs and Related Information Access, Collection, and Protection Laws, updated March 21, 2003
- Imagery Intelligence: Issues for Congress, April 12, 2002
- The National Security Agency: Issues for Congress, January 16, 2001
- Intelligence and Law Enforcement: Countering Transnational Threats to the U.S., December 3, 2001
- Jonathan Pollard: Background and Considerations for Presidential Clemency, updated January 31, 2001
- Cyberwarfare, June 19, 2001 (PDF)
- Countries of the World and International Organizations: Sources of Information, updated May 2, 2001
- U.S. Army School of the Americas: Background and Congressional Concerns, April 16, 2001
- Airborne Intelligence, Surveillance & Reconnaissance (ISR): The U-2 Aircraft and Global Hawk UAV Programs, December 1, 2000
- Intelligence Technology in the Post-Cold War Era: The Role of Unmanned Aerial Vehicles (UAVs), July 26, 1993
- Inspector General in the CIA Compared to Other Statutory Inspectors General, December 21, 1989
- Legislative History of the Senate Select Committee on Intelligence, August 16, 1978
- To Create a Senate Select Committee on Intelligence: A Legislative History of Senate Resolution 400, August 12, 1976

USA PATRIOT Act

- USA PATRIOT Improvement and Reauthorization Act of 2005: A Legal Analysis, updated December 21, 2006
- USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006 (S. 2271), February 21, 2006
- USA PATRIOT Improvement and Reauthorization Act of 2005 (H.R. 3199): A Legal Analysis of the Conference Bill, January 17, 2006
- USA PATRIOT Improvement and Reauthorization Act of 2005 (H.R. 3199): A Side-by-Side Comparison of Existing Law, H.R. 3199 (Conference), and H.R. 3199 (Senate Passed), December 28, 2005
- USA PATRIOT Improvement and Reauthorization Act of 2005 (H.R. 3199): A Brief Look, December 9, 2005
- USA PATRIOT Act: Background and Comparison of House- and Senate-approved Reauthorization and Related Legislative Action, August 9, 2005
- USA PATRIOT Act Reauthorization Proposals and Related Matters in Brief, updated July 15, 2005
- Libraries and the USA PATRIOT Act, updated July 6, 2005
- USA Patriot Act Sunset: Provisions That Expire on December 31, 2005, updated June 29, 2005
- USA PATRIOT Act Sunset: A Sketch, updated June 29, 2005
- Analysis of S. 1709: the Security and Freedom Ensured Act of 2003 (SAFE Act), to amend the Patriot Act, February 19, 2004
- The USA PATRIOT Act: A Sketch, April 18, 2002
- The USA PATRIOT Act: A Legal Analysis, April 15, 2002
- Legislative History of the Senate Select Committee on Intelligence, August 16, 1978

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Legal Sidebar

3/13/2014

Who's Overseeing Whom? The CIA, SSCI, and the Speech or Debate Clause

In a Tuesday floor speech, Senator Dianne Feinstein accused the Central Intelligence Agency (CIA) of monitoring a Senate Select Committee on Intelligence (SSCI) computer network that was used by Committee staff while conducting an investigation into CIA interrogation techniques. Many facts remain in dispute, and indeed, CIA Director John Brennan denies the allegations outright. While acknowledging the uncertainties associated with this controversy, this dispute provides a framework in which to discuss limitations the Constitution has imposed on executive branch attempts to interfere with legislative activities, including Congress's authority to conduct oversight and investigations.

As Senator Feinstein has pointed out, these allegations—if true— could raise serious concerns under general separation of powers principles, threaten the independence of the legislative branch, and potentially obstruct Congress's constitutionally based powers of oversight. More specifically, the allegations would appear to implicate the protections afforded to Members of Congress and congressional staff by the Speech or Debate Clause.

The Speech or Debate Clause provides that "for any speech or debate in either House, [Senators and Representatives] shall not be questioned in any other place." The original purpose of the Clause was to protect the independence and integrity of Congress, allowing Members the freedom of speech, debate, and deliberation without fear of intimidation by the executive branch or the judiciary. Members always remain accountable to the house of Congress in which they serve, since the Clause only prohibits "questioning" *outside* of Congress. The Clause only protects Members, and in some cases congressional staff, when they are participating in "legislative acts." When it applies, the Clause provides immunity from civil and criminal suits and confers a testimonial privilege, which prevents compelled testimony or the use of evidence related to a protected act.

The U.S. Court of Appeals for the District of Columbia Circuit has interpreted the Clause to prohibit not only the *use* of privileged evidence in a court proceeding, but also the *disclosure* of evidence obtained through a search that permits executive branch officers to review privileged materials without a Member's consent. In *United States v. Rayburn House Office Building*, Representative William Jefferson asserted that a search of his office, conducted by the FBI pursuant to a search warrant relating to a bribery investigation, violated the Speech or Debate Clause. The D.C. Circuit agreed, holding that search procedures that deny a Congressman "any opportunity to identify and assert the privilege with respect to legislative materials" and instead "allow[] agents of the Executive to review privileged materials without the Member's consent violates the Clause." In reaching its decision, the court emphasized that the Clause was meant to prevent intrusions into the legislative process and preserve legislative independence, holding that "compelled disclosure [pursuant to a search] may [] chill the exchange of views with respect to legislative activity. This chill runs counter to the Clause's purpose of protecting against disruption of the legislative process." The court made clear however, that the Clause does not prohibit "inquiry into illegal conduct simply because it has some nexus to legislative functions."

While the D.C. Circuit in *Rayburn* concluded that the Clause provides Members with protection not only from use of privileged evidence against them, but also from *disclosure* of such evidence, the Ninth Circuit appears to disagree. In *United States v. Renzi*, the appeals court confronted this question in the

context of a bribery prosecution against a former Member. The *Renzi* court explicitly disagreed with the *Rayburn* court's interpretation of the Clause, holding that the Clause only provides a non-disclosure privilege (and prevents the use of evidence derived from privileged information) when the underlying act being investigated is a legislative act protected by the Clause. Therefore, the court concluded that Members, such as Representatives Renzi and Jefferson, are not entitled to a non-disclosure privilege because the underlying acts being investigated, namely bribery, were not legislative acts covered by the Clause. The Ninth Circuit also noted that the Supreme Court has never adopted the expansive interpretation of the privilege announced in *Rayburn*.

These cases can shed some light on the question of whether the CIA's alleged search of an SSCI computer network, if true, would be deemed to violate the Speech or Debate Clause. Under D.C. Circuit precedent, this type of search could arguably be viewed as violating the non-disclosure privilege recognized by the court in *Rayburn*. Taking the information provided by Senator Feinstein as true, a search of an SSCI computer network (which could include evidence of legislative acts, such as notes and drafts relating to the production of the Committee report) was executed without consent or the opportunity for a Member or staff to identify and assert the privilege over specific documents, just as in *Rayburn*. Conversely, the question of whether such a search would violate the Clause under Ninth Circuit precedent is less clear. Under *Renzi*, a non-disclosure privilege would only protect Members from such a search if the underlying activity being investigated is covered by the Clause. For example, if the underlying activity being investigated is interpreted as the performance of a congressional investigation, which is a legislative act covered by the Clause, then a non-disclosure privilege would apply. Alternatively, if the underlying activity being investigated is not covered by the Clause (for example, if one were to adopt the CIA's characterization of its actions as investigating potential violations of classified information laws), then according to the Ninth Circuit, the non-disclosure privilege may not apply. In any event, it appears as though this potential non-disclosure privilege and the well-established testimonial and use privilege of the Clause would only come into play in the event of a subsequent legal proceeding.

For more detailed information on this topic, see CRS Report R42648, The Speech or Debate Clause: Constitutional Background and Recent Developments.